The public suffers from too much of the wrong kind of regulations. Broadly speaking, government regulation is necessary and justified only when it serves the public interest - not the special interest of private groups or industries.

"While the lines of demarcation are not always sharp and clear, we should recognize that preservation of the environment, and protection of the health and safety, and other essential interests of the public, are proper objectives of government regulations; insuring businessmen from the risk in the marketplace is not.

Existing and proposed regulatory programs should constantly be examined, and, to the maximum extent possible, competition should be established and maintained as our national economic policy - in fact as well as in rhetoric.

Another basic point which seems to have been disregarded is that regulatory agencies were created in order to redress those injuries to the public which can best be remedied by administrative

action. Where only private interests are aggrieved, the proper remedy is private action in the courts. A tort, whether the victim is a competitor or a consumer, is a private, not a public, wrong - and the place to seek relief is the court, not a regulatory agency. To be sure there may be disadvantaged individuals or groups who will - at least for a time - need some kind of government help in securing effective access to the courts. But, this does not justify the transformation of regulatory agencies into courts. Just as administrative process should not be used to insulate businessmen from the rigors of a free enterprise economy, it should not be used to relieve the courts of their duty to redress violations of public wrongs.

Of course, government regulators are - and should be - subjected to external pressures and influences. But, we must distinguish between those that are proper or harmful to the public, and those that are not only legitimate but necessary and desirable. It is one thing for agency members to be responsive to narrow, partisan, political or special interests; it is quite another to be attentive to,

and indeed welcome, the advocacy of consumer interests and public needs. Paradoxically, independence and security or tenure for agency members tends to encourage the former and discourage the latter. In fact, they foster, on the one hand, agency passivity and a reluctance to "rock the boat" by antagonizing powerful special interest groups; and, on the other hand, an attitude of complacency and indifference to those larger public concerns for which there is as yet no effective "people's lobby."

Since agency members are appointed for long terms and cannot, for all practical purposes, be removed from office, the public cannot take effective action against the regulators directly. Nor, as matters stand now, does the public blame the President or the government for poor agency performance and continued agency failures. Despite such failures, the public can neither do anything to remedy the situation nor find anyone to hold accountable.

Mr. Philip Elman, a member of the Federal Trade Commission, speaking to the Anti-Trust Section of the American Bar Association in St. Louis, Missouri on August 11, 1970, stated: "On the basis of my own

experience and observation, the strongest argument I would make against agency adjudication of alleged violations of law is that the blending of prosecutorial and adjudicative powers in a single tribunal imposes intolerable strains on fairness. The problem of avoiding pre-judgment, in appearance or in fact, constantly hovers over all agency activity, and is troublesome to agency members in almost every kind of action it takes. It can arise in the most subtle as well as obvious forms.

Consider, for example, the so-called test case where the agency issues a complaint in order to establish a new legal principle or remedy - agency members frequently take an active part in the pre-complaint investigative prosecutorial phases of these cases; and the complaint is usually issued with the knowledge that, because of the novelty and importance of the issues, it will be fully litigated and be back for adjudication on the record. When such a test case does come up on appeal to the agency members, while there is no bias or pre-judgment of guilt in the classic sense, there is an inescapable predisposition in favor of the agency

position, as set forth in the complaint ... to put it bluntly, once such a complaint is issued, one should ask for long odds before betting against the issuance of a final order. While a test case may be, and usually is, vigorously contested, results - at least in the agency phase - is likely to be a foregone conclusion.

The insurance commissioner or a member of the Utilities Commission may vote for an order not because he is personally convinced that the petitioning insurance company or utility is or is not entitled to the certain rate increase, but because he feels, perhaps in an excess of humility, that since the position advocated by the staff of the insurance commission or the Utilities Commission, is that of his employees, his duty is to find against petitioner and that he is obliged to defer to the agency's expert judgment and discretion.

There are other institutional factors that intrude upon fair and impartial agency adjudication. Theoretically, an agency member or the insurance commissioner sits as a judge, his freedom to decide

is the same as if he were on a court. But the judicial process is designed to insure that the judge is both neutral and disinterested, and has no interest other than that of applying the law fairly and even-temperedly. The insurance commissioner, or a member of the Utilities Commission on the other hand, cannot be unconcerned with whether the outcome of the case is to advance or retard an important agency program to which substantial resources have been committed, or whether the outcome of the case is contrary to that advocated by the agency's own experts and staff members. Even the most conscientious regulator cannot, when he acts as judge, ignore the effect which a decision will have on the agency's staff and regulatory policies and goals.

Moreover, an agency cannot escape the implications of its leadership roles in the agency. He may fear the effect on staff morale if he votes for an order which is contrary to that urged or advocated by members of his staff or if he votes to reject the agency's position in an important case.

In short, agency members will become better regulators if we no longer expect them to act as

judges as well as prosecutors. We should not require a conscientious agency member to shoulder the irreconcilable burdens of both vigorously prosecuting and fairly judging in the same case. We should relieve the insurance commissioner and members of other regulatory agencies from the impossible duty of determining whether the contentions of the petitioning industry, whether utility or insurance, are supported by the evidence in the record of a proceeding in which the insurance commissioner or other agency is itself an adversary party.

No reforms in the structure of the regulatory agencies will succeed unless there are also radical changes in the climate of government and political processes. Our political and governmental processes have grown so unresponsive, so ill-designed for contemporary purposes, that they waste the taxpayer's money, mangle good programs, and smother every good man who comes into the system. We must open wide the doors and windows of government agencies, so that the public may see for itself what is or is not being done, and demand an accounting from those in charge.

Every institution of government, must be renewed and adapted to change in social and economic conditions. It is no criticism of the administrative process, and the creative statesmen and scholars who have nursed its growth to find that it is no longer adequate to the needs of the present and the future.